

**Complaint Investigation Report**  
**Complainants v. RSU #75**

June 21, 2011

Complaint #11.082CS  
Complaint Investigator: Jonathan Braff, Esq.

**I. Identifying Information**

Complainants: Complainants  
Address  
City

Respondent: J. Michael Wilhelm, Ed. D., Superintendent  
50 Republic Ave.  
Topsham, ME 04086

Special Services Director: Patrick Moore, Ph.D.

**II. Summary of Complaint Investigation Activities**

The Department of Education received this complaint on April 27, 2011. The Complaint Investigator was appointed on April 28, 2011 and issued a draft allegations report on May 2, 2011. The Complaint Investigator conducted a complaint investigation meeting on May 18, 2011. On May 25, 2011, the Complaint Investigator received a 4-page memorandum and 17 pages of documents from the Complainants, and a 17-page memorandum and 406 pages of documents from RSU #75 (the "District"). Interviews were conducted with the following: Patrick Moore, Ph.D., special services director for the District; Jennifer Nucci, special education coordinator for the District; Kelly Allen, autism consultant for the District; Jessica Fournier, teacher for the District; Debbie Patterson, speech/language pathologist for the District; Kathy Murphy, physical therapist for the District; Barbara Piccirillo, occupational therapist for the District; Rick Dedek, school principal for the District; and a resident in the District.

**III. Preliminary Statement**

This complaint was filed by Complainant (the "Complainant") and Complainant, residents of the District, alleging systemic violations of the Maine Unified Special Education Regulations (MUSER), Chapter 101, as set forth below.

#### **IV. Allegations**

1. Having a policy or practice of not conducting a reevaluation at least once every 3 years in violation of MUSER §§V.1.B(2)(b);
2. Having a practice of not fully and adequately implementing students' IEPs during the first three weeks of the current school year in violation of MUSER §IX.3.B(3);
3. Having a practice of modifying students' educational programs without utilizing their IEP Teams as the vehicle for making those decisions and without adequately considering their unique, individualized needs in violation of MUSER §§II.32, VI.2.I and IX.3.C(1)(d);
4. Having a policy or practice of providing all special education students at Woodside Elementary School with an abbreviated school day, and thus not providing them with a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a).
5. Having a policy or practice of not making determinations of the amount of extended school year services to be provided to students on an individualized basis in violation of MUSER §X.2.A(7);
6. Having a practice of not providing special education, related services and supplementary aids and services that are based on peer-reviewed research in violation of MUSER §IX.3.A(1)(d).

#### **V. Summary of Findings**

1. During the 2008-2009 and 2009-2010 school years, although the District's written policy stated that the school day at Woodside Elementary School ended at 3:15, students were actually dismissed from their classrooms at varying times between 3:00 and 3:15. Special education students were dismissed closer to 3:00. During the 2010-2011 school year, all students at the school have been dismissed at 3:15.
2. During the summer of 2010, the District staff undertook a review of the District's autism and life skills programs, including the IEPs of the students in those programs. Staff members also observed programs at other schools serving those populations, and discussed the research supporting the delivery of services in natural settings rather than clinical settings. The District redesigned their programs so that both of those populations were combined into a single program (the Special Programs Intermediate ("SPI") program), which would include increased opportunities for instruction to be delivered in group settings rather than individual ones. One of those opportunities involved the creation of a social communications group consisting of six students, where some of the speech services for those students would be delivered. As the school year progressed, a number of the students' parents voiced their objection to delivery of speech/language services in that format and the District disbanded the group.
3. Another component of the program was formation of the "lunch bunch," supervised by Ms. Patterson and Ms. Piccirillo, when a group of the students in the program would eat lunch

together once per week, separate from the general education population, to work on functional life skills around the lunch activity as well as social communication skills. As the school year progressed, a number of the students' parents voiced their objection to this activity and the District discontinued it.

4. The District has two ESY programs, one at the Middle School and one at Bowdoin Day Camp. The camp setting is more for social communication skills and the school setting more for academic work. Students' IEP Teams routinely meet to decide whether the Student requires ESY services, what goals are to be addressed, in which of the settings (or both) the program should occur, and the frequency and duration of the program.

5. The District has an administrative referral process overseen by the District's special education coordinators, who are responsible for making sure that evaluations and reevaluations are conducted in a timely manner. In addition each special education student is assigned a case manager, one of whose responsibilities is ensuring that the students' evaluations are kept current. The District uses a "Referral for Individual Evaluation" form to document this information. This year, the District has so far conducted 111 reevaluations. A reevaluation of each of the students in the SPI program has taken place during the period from October 2008 through March 2011.

6. During the 2009-2010 school year, due to Ms. Piccirillo having to conduct kindergarten OT screening, some number of special education students at Woodside Elementary School did not receive all of their IEP-required OT services. The District consolidated the screening program for the 2010-2011 school year, so that most (but not all) of the students received all of their IEP-required OT services.

7. During an interview conducted by the Complaint Investigator with Jennifer Nucci, Ms. Nucci stated the following: She is the elementary special education coordinator for the District. Her responsibilities include all six of the elementary schools in the District, where she works with teachers, students and families, supervises staff and administers IEP team meetings. She also participates in program development.

Last year, the District had two separate programs, one for students with autism ("ACE") and a functional like skills program ("FLS"). At the end of the year, she was part of a team of professionals, including therapists, teachers and a behavior consultant, who reviewed these two programs and the IEPs of the students in both of them. They found that the students' IEPs contained certain common goals involving social communication skills and generalization of communication skills, and they all involved discrete-trial training. Each of the students also received full-time 1:1 services from educational technicians, so that they were constantly getting direct instruction throughout the day. The team talked about the difference between the "medical model" and the natural environment approach to delivering these services, and the research that supports the latter. The team discussed how to better incorporate occupational therapy ("OT") and physical therapy ("PT") into daily activities, and how to train the educational technicians so that they would be working throughout each day on the students' goals. They also looked at the speech/language criteria for providing services to children with autism, and found that one of the major themes was to move away from working with students in isolation, where research shows that those students don't learn to

generalize the skills being taught. The team also visited and observed at Margaret Murphy Center, where there was a strong emphasis on working with children in groups with a lead instructor and on getting the children to generalize new skills.

The result of these activities was a new program, called Special Programs Intermediate (“SPI”), which had all the students from ACE and FLS in one setting together. Each student still had his or her own educational technician, with a lead teacher making sure that each student’s program was being implemented and that the necessary data was being collected. Part of the new program involved delivering some of the students’ speech/language services in a group setting, where the students had the opportunity to practice social communication skills and where they could learn to generalize the skills they were learning in their individual speech/language sessions. This generated controversy among some of the parents, as there was some confusion over whether “direct instruction” in the IEP meant individual instruction.

Due to the resistance from parents, the staff met and agreed to quell the controversy, although they were convinced that their methods were educationally sound and research-based and although they believed that they were getting good results from the program. All speech instruction reverted to individual sessions. The only group experiences the students now participate in are “calendar time,” where they work on weather, days of the week, counting and other basic concepts, and a 15 minute math group, where they work on math goals that the group members have in common. These group activities provide at least some opportunity for social communication. She believes that if the District had done a better job communicating with the parent community before the school year began to explain the new program, there may have been less resistance to it.

The program was designed around all the students’ individual IEPs, and all of the students were working on their individual IEP goals. While it is true that each student in the group setting receives fewer opportunities for direct interaction with the therapist, his or her educational technician is present throughout the session, continuously prompting the student and reinforcing the lessons. She also believes that these students, with assistance from their educational technicians, do benefit from being present when the therapist is interacting with one of the other students. Next year, the students will be going out into the community and using the skills they develop in school. They may have the foundational skills, but they need to use them in natural settings.

As part of her duties, she reads every Written Notice and IEP of each of the students at her six schools. The District routinely conducts reevaluations of students at three year intervals, unless the IEP Team discusses it and determines that one is not needed. She recently attended a meeting where the parents of the student had obtained an outside evaluation, everyone agreed to use it for purposes of the triennial evaluation, and agreed that no additional evaluation was needed.

With regard to extended school year services (“ESY”), an ESY meeting is held for each special education student. The Team looks at the goals in the student’s IEP and at whether there is data to show that the student will lose the progress made if the student doesn’t continue to work on them over the summer. Where the Team finds that this situation exists, there are two ESY programs currently running in the District, one at the Middle School and

one at Bowdoin Day Camp. The camp setting is more for social communication skills and the school setting more for academic work. The Team decides which setting is more appropriate for the student, and decides how many weeks, days and hours the student should participate. Some students go two days a week for a full day, some go five days a week for a half day. Some children go to the school setting some days and the camp setting other days. The Teams always base the decision on what the student requires in order to not lose progress.

With regard to the District's programming being research-based, the District consults with a reading specialist to make sure the reading programs are keeping up with current research, and the staff reviews math programming with the same goal. Staff members are continually attending professional development events, and the District subscribes to professional journals which are shared among staff. Everyone on the staff has taken SCERTS training, and many have experience working at facilities such as Margaret Murphy Center, the May Center and Woodfords. She personally recently attended a three-day conference on social speech skills, and is taking courses at USM. All this information is used in the design of programs for students.

8. During an interview conducted by the Complaint Investigator with Kerry Allen, Ms. Allen stated the following: She is the autism consultant for the District, a position that was created just this year. She has a caseload of students, and consults with teachers, conducts observations, and works directly with those students. She also develops strategies to help her students with academics, social skills and emotional regulation.

When the staff was designing the SPI program, they were trying to develop ways to help the students learn to generalize the skills they were learning in their individual therapy sessions. They wanted to provide opportunities for the students to practice those skills in a natural setting. One of the program elements they came up with was the "lunch bunch," a time when students from the program would eat lunch together once a week in an environment where they could learn tasks such as setting the table, and conduct brief conversations with one another. It was seen as an opportunity to "teach in the moment." In addition, the students were going on to Middle School next year, and this was seen as an opportunity to prepare them for eating in the lunchroom in that new environment. The District sent letters home to the parents at the beginning of the year explaining about the program, but the parents objected and the District eventually scrapped it.

With regard to ESY, there are specific goals for each of the students in the program. The program is generally designed around getting the students out into the community. The staff of the summer program is given materials, instruction and schedules to make sure they are working on the appropriate goals and objectives over the summer. For ACE students, a lot of their summer program activities are the same because a lot of their goals are the same, but not all the goals are the same and the expectations for the students vary, as do their behavior plans. The staff works on each student's individual goals within the framework of the program.

SPI is an ABA program which is completely research-based, as is the SCERTS model which the District is using. SCERTS is a team approach to understanding and evaluating students'

abilities in social communication and emotional regulation. The District sent a number of staff members for training in the SCERTS model, and they thought it was great. SCERTS has been chosen by a number of IEP Teams as the assessment of choice for students' reevaluations. She is not aware of any policy or practice of disregarding the requirement that triennial evaluations be conducted.

9. During an interview conducted by the Complaint Investigator with Jessica Fournier, Ms. Fournier stated the following: She is the special education teacher for the SPI program. There are a total of seven students in the program, five of whom (including the Student) are actually in the classroom with two others in separate learning spaces. Each student has his or her own educational technician. She is not aware of students not getting their therapies during the first weeks of the school year. Schedules do change during those first weeks, but there is no system in place that results in students not getting their services. The District writes IEPs with service durations stated in terms of months rather than weeks, so although the days and times when services are provided may change, by the month's end the students receive the services they are supposed to.

Each of the students in the program has his or her own IEP with short-term objectives, and work on those objectives is put into place in the context of the program. Conceptually, however, all the students are working on the same type of skills. Social communication is a deficit for all of those children, and this is something that they need to work on in a group context, not individually. Part of her job is to make sure that, within the group, each student is working on his individual objectives, and that the proper data is being collected (which is different for each student). The class has been broken down into two different groups both for math group and for calendar time, to reflect the students' different needs and abilities. She designs activities that will address the objectives for each student in each group, and although each student may be working on something different, they will come together for certain activities. All during the process, each student has an educational technician dedicated to addressing the student's learning style and collecting data. This is in addition to the individual work each student does during the day.

With regard to ESY services, each student has his own ESY meeting. The Team looks at the Student's learning style, the rate of regression the Student exhibits, which skills have been mastered and where there might be regression over the summer. The Team identifies the goals that the student needs to continue to work on and the amount of time required in order to avoid regression. The Team considers the kind of program that would best address those goals, but also takes into account the student's emotional needs. There are no set programs – she has had five meetings so far this spring, resulting in five different programs of different lengths and number of hours.

10. During an interview conducted by the Complaint Investigator with Patrick Moore, Ph.D., Dr. Moore stated the following: He is the Director of Special Services for the District. The District does a lot of program development. Every year, the staff is looking at the different parts of the student population and asking whether the District could be serving them better. The District makes every attempt to involve parents as partners in this process. Recently, there has been a clash between the “medical model” (providers delivering services one-on-one

in a clinical setting) and a more ecological model (services embedded in a natural setting). Parents often use outside providers who feed their notion that only the medical model is of value.

With regard to the SPI program, the staff worked so hard on its development, but they made one mistake: not enough communication in advance with the parents. After the year got underway, the District started holding monthly meetings for all the parents of those students.

This year, the District did 40 initial evaluations and 111 reevaluations. There is no policy or practice of avoiding reevaluations. There is an administrative referral process, overseen by special education coordinators, and a case manager assigned to each student. One of the responsibilities of the coordinators and case managers is to make sure that all evaluation information is up to date, and when a triennial date arrives to make sure that determinations are made by the IEP Team. In this parent population, the parents often obtain outside evaluations, and the District often uses that data to make eligibility determinations and programming decisions. There may not always be sufficiently explicit discussion that these evaluations are being used as the reevaluations.

Up until this year, the practice at Woodside Elementary School was that all students started getting ready to leave at around 3:00. Instruction ended for all students between 3:00 and 3:15. Some kindergarten classes went outside at 3:05. Announcements started to be made at around 3:05. There was no policy that special education students' school day was to end at 3:00, but there might have been a special education bus that carried students from all over the District which picked up Woodside students at 3:00. The reality is that the students in the SPI program all have 1:1 educational technicians throughout the day, so that instruction happens every minute of the day and they are never without some kind of programmatic intervention. If one were to count the total minutes of the day that these students received direct instruction, it would be greater than for the regular education population. This year, Mr. Dedek decided that every minute of the school day should be used instructionally, so now instruction for every child continues until 3:15.

There is no policy that special education children do not receive services during the first three weeks of school. There are practical considerations that come into play during this time, however. Providers are often itinerants, serving multiple schools. The District decided to adopt a service model from the state of Washington whereby providers spend three weeks providing direct service to students and the fourth week doing observations and consultations. This reduced the amount of travel time for providers and increased the time available for delivering services. As a function of this model, the District measures the frequency of services in IEPs by the month. During the first month of school, the requisite amount of service is being delivered, but may not be according to a fixed schedule.

The "lunch bunch" was not an IEP decision. The IEP decision was to provide Direct speech/language services; "lunch bunch" was the vehicle chosen by the providers to deliver the services working on social communication goals. This is part of the latitude allowed professionals in deciding how to fulfill their responsibilities. When several of the parents

objected to the “lunch bunch,” the program became too much of a distraction and it was abandoned.

With regard to ESY services, the District used to conduct ESY programs at Woodside, where the students had no interactions with non-disabled peers. They found that some of the children were regressing, and decided to have a few of the children receive ESY services at Bowdoin Day Camp. Those children flourished, and the District continues to send children there for ESY, while also establishing two additional ESY programs at the Middle School (one for students who are severely emotionally disturbed and one for students who are autistic) and occasionally sending children to programs elsewhere. The students’ programs are of varying lengths and frequencies. Each student’s IEP Team looks at which skills the student has mastered and might experience regression without continuing to work on them over the summer. The District provides an educational technician, teacher, speech/language and other providers depending on the skills that are identified, reasonably calculated to prevent regression.

With regard to research-based programming, the District sends staff members to an annual autism conference in Boston, and those staff members share what they learn with the rest of the staff. The District was recently invited to present a workshop at Bates College as part of a weeklong program on autism, on the subject of how a public school does the organizational development necessary for a successful autism program. There will be parents of students in the program helping to present the workshop.

11. During an interview conducted by the Complaint Investigator with Debbie Patterson, Ms. Patterson stated the following: She is a speech/language pathologist for the District. Each student’s program is always individualized, developed so that the student’s individual needs are being met, whether in group or individual sessions. This year, she began delivering speech/language services in group sessions during the first three weeks. Group sessions began with greetings, something on which the students need to work. Each session was based on a story, followed by questions and answers; answering and understanding “wh” questions, and creating sentences in forming answers are also IEP goals for the students. The students’ educational technician would be prompting the students in answering the questions. Although students may be getting more “hits” (direct interaction with the therapist) in individual sessions, the question is whether they are going to generalize what they learn there. She sees that generalization happening more in the group setting. She doesn’t take the position that there should be no individual work, but she doesn’t believe that the reduced individual work during the first three weeks was detrimental to the students.

ASHA has developed a set of guidelines to address the needs of children with autism. It includes the recommendation to provide services in the most naturalistic setting available. The District was providing direct instruction, but in a group setting. These students need assistance in order to attend when another student is being asked questions, but learning to do this is very important for them. It is called “joint attention,” and is defined in the SCERTS program. The students can’t work on social skills goals that involve joint attention when they are receiving individual therapy.



“Lunch bunch” was a programmatic decision. The feeling of the staff was that this group of children will be moving next year to Middle School, and eating in the cafeteria would be one of the inclusive moments for them. That inclusion would not be as facilitated there as it is in Woodside, so the staff wanted to create an opportunity to expose these students to how people sit around a table and have lunch. She and Ms. Piccirillo worked together to create this group. They looked at materials available on social skills, and identified a number of skills to work on, such as using napkins, not eating food off of the floor, etc. The group would meet once a week, and would not take the place of other speech/language or OT sessions, but would be in addition. The regular education lunchroom is not an environment in which to deliver instruction - it is too distracting. They met once, but it never really got off the ground because it didn't have enough parental support.

12. During an interview conducted by the Complaint Investigator with Colleen Congdon, Ms. Congdon stated the following: She is an educational technician III for the District. She will be leaving that employment at the end of this school year. One of her students had been having a series of monthly meetings between the parents and the case manager. She heard the parents say that the student's reevaluation was one year overdue. The case manager was pushing to get it done, but it still took another six months because the student needed an evaluation by a specialist that the District couldn't provide. The student is due for an annual review in September or October, and she doesn't believe that the reevaluation will be completed in time.

For that same student, during the first three weeks of school the student received only 45 minutes of individual speech/language therapy. The student also participated in social group speech instruction sessions, and she doesn't know how much time that entailed or whether the District counted that toward his speech services. She went to an administrator because she knew that the parents of the student thought that the student was getting the amount of therapy required by the IEP. She was told that she could give that information to the student's teacher, but could not talk directly with the parents. In February, she switched to a different student, and that student had also not received the proper amount of speech/language services, so the District was providing double or triple the amount towards the end of the year to try and make up for it. The service disruption was caused by the District losing one of its therapists. They then hired a replacement who was only available on Mondays (when many students swim) and Thursdays (when there are often administrative meetings).

She believes that parents were not consulted about the group speech and OT sessions because when the parents found out about it, students were pulled from those groups.

All students don't receive services until the end of September because providers are doing evaluations of kindergarten students during that time. Also, providers don't provide services once a month because of consultations. The District has used educational technicians to fill in for the OT and PT providers, and she has received training from the OT and PT on what to do with the students, but she doesn't know about the other educational technicians. Currently, the speech/language pathologist and the PT provider provide services during consultation week, but the OT does not.

Last year, special education buses were leaving at 3:00, but now they leave at 3:15. This is the first year that special education students are staying until 3:15, after several parents complained. Last year, in regular education classes, 3:00 until 3:15 was instructional time. One of her students went to a regular education class for a reading activity, and he had to leave at 3:00, while the rest of the class had end of day meetings and other things.

She knows that some students receive more ESY services than other students, but she does not know how that gets decided.

13. During an interview conducted by the Complaint Investigator with Barbara Piccarillo, Ms. Piccarillo stated the following: She is an OT for the District, working at Woodside, the Middle School and the High School. Last year, the first three weeks of school were tricky due to her need to conduct kindergarten screening, so this year the District tried to consolidate the screening process. She can't say with certainty that all students received their full amount of services during September. She believes they got some services, but she has been unable to find her logs that would contain that information. This year, most of her students received the full amount of services they were entitled to under their IEPs. The District has taken steps to streamline the screening process even more, so next year should be even easier.

Together with Ms. Patterson, she developed the "lunch bunch" program. She believed it was a great way to provide instruction on life skills around meal time while also building social skills. She also thought it was a great start to the transition process into Middle School. The students had been in cooking groups before, but there they worked as a group making one dish. This time, the activity would be more individualized; everyone would make their own lunch. She would embed in the program some of the OT services she was providing to each student individually.

Regarding the length of the school day, some buses are there earlier than other buses. She doesn't recall all special education students leaving at 3:00. She personally provided OT services to some of the special education students until 3:15. Teachers often do end of the day's activities with students during the 3 – 3:15 period; it's often called "pack and stack time," with children winding down and getting ready to go home.

The District has become increasingly creative with ESY programming. Beyond the day camp, they have also been incorporating more community outings into the program. Within the ESY programs, there's a variety of things that are going on: some children are working on academic goals in their IEPs, while some are working on gross motor skills or leisure skills. Within the programs, there is a lot of flexibility for what the children participate in depending on their needs, likes and social skills ability. At the camp, the teacher looks at the schedule for the day. If one student really likes chess, the teacher will make sure to not schedule academics during the time when the chess activity is being conducted. Some children find a full day at camp very difficult, so they may only attend the morning session, or have a more relaxed afternoon session.

Triennials are generally discussed at IEP Team meetings. The Team discusses whether the student requires one, and requires all of the components of the evaluation or only some of

them. She doesn't know of any student where the district intentionally didn't bring up the subject or refused to do one when the parents asked for it.

14. During an interview conducted by the Complaint Investigator with Rick Dedek, Mr. Dedek stated the following: He has been the principal of Woodside since 2009. When he came in last year, the school had a written policy that the school day ended at 3:15, but he observed that students were leaving their classrooms between 3:00 and 3:05, and all the students were gone by 3:15. The time when students left seemed to vary more by grade level than anything else, with the youngest children leaving the earliest. Special education students were probably leaving around the same time as first and second graders, but this wasn't very different than when the older children were leaving.

He wanted to maximize the instructional time for students, so this year he asked that no teachers dismiss their students until they heard the 3:15 dismissal bell, with announcements starting after the bell. He also told parents who picked up their students not to come to get their children until 3:15.

15. During an interview conducted by the Complaint Investigator with the Complainant, the Complainant stated the following: He learned about the requirement for a triennial reevaluation when he spoke with a lawyer, and realized that his child hadn't had one for well more than three years. When he brought it up with the District, they agreed to do a comprehensive reevaluation. He has spoken with other parents in the District, and he learned that the District did a bunch of reevaluations for other children right after he brought up the issue. One parent told him that someone from the District told her that they couldn't do a reevaluation of her child that year because of a lack of fiscal resources. There was only one parent that was willing to be interviewed for this investigation.<sup>1</sup>

With regard to the first three weeks of the school year, he believes that the District provided the proper amount of OT services, and does not wish to pursue that. With regard to speech, the issue is whether the language group sessions count towards provision of speech therapy under the IEP; if they do, then the required amount of services were provided. As to PT, he doesn't know where the District got its dates from. He did a FOIA request and received, among other documents, some PT logs. The dates on those logs do not match up with dates provided by the District in this investigation. The logs show three dates in September, totaling 90 minutes of direct therapy and 60 minutes of consultation. He did not include adapted aquatics, because that is a separate service in the IEP. This is a pattern every year. It takes a few weeks to get things set up, and there is no regular provision of services. E-mails supplied to the investigator say that therapies are going to start next week, or that the schedule is not set yet and there will be no therapy until then.

With regard to the social communication group, he believes that speech "therapy" has a particular meaning. For the last six years, it has meant one-on-one therapy sessions, working on specific goals (production of certain sounds, using the Vantage). The group sessions

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<sup>1</sup> The investigator called this parent and left a message, and then called again and confirmed that the message was received. The parent did not contact the investigator.

didn't meet that definition. He hasn't seen any evidence that any of his child's speech/language goals were addressed during the group sessions. The District claims that "direct" instruction in the IEP can be in a group setting, but that's not what he agreed to; he understood that to mean, based on past practice, individual therapy. He agrees that his child was getting some individual therapy at the same time that he was participating in the group, but all the daily diaries he received said only group until September 21, 2010. Social language group may very well have value, but it's not what his child's IEP requires. There are social communication goals in his child's IEP, but he expects those to be worked on in the classroom, in the hallway, during calendar time and during other group activities.

At the beginning of this year, he was surprised to learn of his child's new program design. He received a schedule of his child's new day – it was not individualized, but was the schedule for the entire class with no therapies on it. There were some big changes, especially the social communications group, the lunch bunch and other group activities. His concern with the lunch bunch was that it was a more restrictive environment. He believed that his child would derive more social communication benefit from eating with his non-disabled peers, as he had been doing. He thinks that the students in the SPI program are not good role models for each other. The regular education students in the lunchroom will come up to his child and talk to him, and his child can watch their interactions. His child is supposed to have his educational technician with him in the lunchroom to help him learn social communication skills. He questions who will be collecting data in the lunch bunch, as the educational technicians are not part of that program. He wonders whether the lunch bunch was a way of giving the educational technicians the 15 minute break they are supposed to receive so they can eat their lunch.

He also believes that the social communications group was initiated as a cost saving measure. Ms. Patterson used to be only at Woodside, but is now also at the Middle School, so it seems that the District is trying to stretch her a little bit. At the beginning of the year, he asked Dr. Moore to provide information about Ms. Patterson's workload – how many students were on her caseload and how many hours of instruction she was providing. He wanted to know whether group instruction was a genuine recommendation or was a way to cut costs. He knows that the District has had trouble in the past with hiring speech therapists. Dr. Moore refused to provide this information, and this unwillingness made him suspicious.

He doesn't know whether the parents' positions would have been different if the group approach had first been discussed at IEP Team meetings. He is not sure that the providers can adequately address the individual goals of six different students at the same time. He doesn't see how his child can have many opportunities to initiate conversation in a group of six, though maybe it would work with a smaller group or with regular education students throughout the day. He believes that the District designed the program first and then fit the students into it. He hasn't seen any documentation that the District staff sat down and discussed the individual students' goals and how they could be addressed in a group context, or how long the group session would need to be in order for each student to get what he needs. He thinks that it was only when the parents challenged the program that the District went back and rationalized their answers.

Up until September 2009, when he requested that his child stay at school for the full day (until 3:15), on those days when he picked up his child after school (he did this about twice a month), first his child came out and then his younger child, who was in a regular education 2<sup>nd</sup> grade classroom, came out later. His child came out earlier than any of the regular education students. The students' dismissals seemed haphazard, with announcements starting before 3:15. His child and the special education buses were always out by 3:00, and his younger child came out at 3:10 – 3:15. It seemed like 2:45 – 3:00 for the special education students was the equivalent of 3:00 – 3:15 for the regular education students. He agrees that this year all the students are being dismissed at 3:15.

With regard to ESY services, he had never been to an IEP Team meeting to discuss summer programming until he asked for special programming last spring. In prior years, he had simply been told of what the ESY program consisted. It was 5 or 6 weeks in the middle of summer, usually on Tuesdays and Wednesdays. His experience was that the District said "This is our summer program, and your child qualifies." He believed there must have been some state-mandated number of days and hours for all summer programs. He decided that his child needed a little more from his summer program, so he approached the District about having his child attend Bowdoin Day Camp. The District agreed to pay to have an educational technician provide the same number of hours she would have provided in the District's program. There was never really a discussion about the amount of time the program would run, but they did discuss the services that would be provided. The year before, when he found out that the PT and OT therapist were involved in the District's program, he asked why his child wasn't getting those services, and they were added to his child's program. This year, the Team actually talked about the amount of time as well as the services and goals to be worked on. There was a parent meeting this April where Dr. Moore was explaining that the District was going to start planning the students' ESY programs individually, and one of the parents asked "But it's still going to be 12 hours a week, right?" He hasn't heard of any student getting anything other than the standard 12 hours, although maybe sometimes the District offers less than that.

He wants the District's decisions to be based on good research and good science. He asked to see research regarding the effect of the size of the group when delivering group speech. Of the articles the District provided, two of them involved individual therapy sessions and one involved a group of three, although three times the amount of service was provided in that case. It is true that they all supported the basic position that delivery of speech services in the natural environment could be as effective as individual sessions, but they were also from 1987 – 1992. Autism is a dynamic field, and there should be more recent research available than that. He also isn't convinced that the staff actually looked at those articles when designing the program.

It is true that there is research to support the ABA approach, but he doesn't think that the District follows the program. ABA requires 25 hours per week of instruction, and his child gets 610 minutes (about 10 hours). SCERTS seems like a good program, but there needs to be hard research to prove that it actually provides benefits to the students. When the Maine DOE and DHHS did a review of the science literature on autism a few years ago and rated various intervention programs, they said ABA was well-supported in the literature, but that

SCERTS was insufficiently supported. Also, as with ABA, the District is not really following the SCERTS protocol, which has fairly specific guidelines for data and transactional support. He hasn't seen this data, or other evaluations described in the SCERTS manual. He wants to know that staff members are going to seminars where recent research is being discussed and are reading journal articles. The District cites the fact that staff members went to observe at Margaret Murphy to support their position that their programming decisions are research-based, but the fact that another institution does something is not evidence that it is supported by research.

## **VI. Conclusions**

**Allegation #1:** Having a policy or practice of not conducting a reevaluation at least once every 3 years in violation of MUSER §§V.1.B(2)(b)

**NO VIOLATION FOUND**

MUSER §V.1.B(2)(b) requires that a reevaluation of each special education student be conducted at least once every three years, unless the school district and the parent agree that it is unnecessary. Although two individual instances of possible violations of this requirement were reported, this investigation uncovered no evidence of any system-wide avoidance of this obligation. To the contrary, the District has in place an administrative framework to help ensure that evaluations are kept up to date, and provided documentation that, with perhaps some few exceptions, the regulatory requirement is adhered to. Those instances where there may have been a dereliction of duty properly are to be resolved, as one already has, through individual due process proceedings as the individuals involved deem necessary.

**Allegation #2:** Having a practice of not fully and adequately implementing students' IEPs during the first three weeks of the current school year in violation of MUSER §IX.3.B(3)

**VIOLATION FOUND**

The beginning of the school year poses particular challenges to school districts as they attempt to provide the various services required by special education students, as a function both of fluctuating student and class schedules, and of providers' other start-of-the-year duties. One way the District has found to facilitate students' receiving the full of amount of services they need is to state service frequencies in terms of hours per month, rather than per week. This gives providers flexibility in delivering services when time is available until regular schedules are finally set, and, with one exception (see below), the full amount of services were able to be delivered.

Ms. Piccarillo conceded that she was not able to fully comply with the IEP requirements of all students who have IEPs that provide for OT services during the first month of school this year, primarily due to her having to conduct kindergarten OT screenings during that time. Although she was unable to locate her records that would document the services she provided the previous year, she stated that delivery of services was less problematic this year than last

year. She did describe measures the District has taken to consolidate and streamline the process, such that she expected the problem to be resolved in the coming year. Although Ms. Piccarillo was optimistic that the problem has been resolved for next year, the fact remains that there were multiple students who did not receive the designated amount of OT services during the first month of school in the last two years.

**Allegation #3:** Having a practice of modifying students' educational programs without utilizing their IEP Teams as the vehicle for making those decisions and without adequately considering their unique, individualized needs in violation of MUSER §§II.32, VI.2.I and IX.3.C(1)(d)

**NO VIOLATION FOUND**

This allegation concerns the District's development of the SPI program, with its emphasis on group instruction. The program was based, in part, on the recognition that there was substantial overlap in the individual students' needs and goals with respect to social communication, and provided a framework within which those individual needs and goals could be addressed. The Complainants contend that this programming decision was one that had to be made by each student's IEP Team. The decision of the method by which a service provider delivers direct services, however, is a matter left to the provider's professional judgment. Special education law preserves the rights of parents to participate in the development of students' IEPs, but it does not empower parents to dictate to school districts precisely what methods are to be employed, how they are to be employed or by whom. "The IDEA confers primary responsibility upon state and local educational agencies to choose among competing pedagogical methodologies and to select the method most suitable to a particular child's needs." *Lessard v. Wilton-Lyndeborough Cooperative Sch. Dist.*, 518 F.3<sup>rd</sup> 18 (1<sup>st</sup> Cir. 2008).

The District's decision to program for delivery of social communication speech instruction in group settings was reasonably based upon recognition that the students' IEPs all contained social speech goals, on the observation that the students working on those skills individually in a clinical setting were not successfully generalizing the skills, and on research that suggested that students who receive speech/language instruction in natural language contexts were better able to generalize those skills. For each student in the program, if, after a reasonable period of time, it was found that the student was not making adequate progress towards his goals, the District would then be obligated to revise the student's program. Until such time, the District was free to embrace a different method for delivering its services. Likewise, the decision as to the mix of students who would participate in the program was not an IEP Team decision, absent a particularized issue that suggested that any specific student could not receive FAPE under the existing conditions.

**Allegation #4:** Having a policy or practice of providing all special education students at Woodside Elementary School with an abbreviated school day, and thus not providing them with a free appropriate public education in violation of MUSER §II.11 and 34 CFR §300.101(a)

**NO VIOLATION FOUND**

The District’s written policy states that the school day at Woodside Elementary School ends at 3:15. During the 2008-2009 and 2009-2010 school years, students at Woodside were being dismissed at different times and had different activities occurring in their classroom during the 3:00 – 3:15 time period. School announcements were played over the loudspeakers during this period. This appeared to be a function of bus transportation schedules and a general school culture that treated dismissal time as a flexible concept. Although there does not appear to have been any explicit decision that this be the practice, special education students were among the first students to be dismissed, at approximately 3:00.

It is not possible to say by what amount, if any, the total amount of instructional time experienced by special education students during those years was less than for other children, and less so the extent to which any such shortfall deprived those student of a FAPE. In any event, Mr. Dedek recognized the need for school-wide improvement in this regard, and instituted a policy of uniformity for dismissal times for all students, thus correcting whatever negative impacts the previous practice may have had.

**Allegation #5:** Having a policy or practice of not making determinations of the amount of extended school year services to be provided to students on an individualized basis in violation of MUSER §X.2.A(7)

**NO VIOLATION FOUND**

While it is true that the District ran summer programs over a set number of weeks with a set number of hours per week, the District is not required to develop 15 different ESY programs for 15 different students who are determined to require those services. The requirement is to individually consider each student’s needs and make a determination that the services being provided will adequately enable that student to retain the skills the student mastered during the previous school year.

The District’s practice was here found to be sufficiently particularized as to each individual student. The regular practice is for each student’s IEP Team to explicitly consider whether ESY services are appropriate for the student and, if so, in which setting and for what duration and frequency it should occur. The summer program staff members are given materials and direction to ensure that the appropriate goals are being addressed for each student. Both Ms. Fournier and Ms. Congdon described their familiarity with the variability of different students’ ESY services.

**Allegation #6:** Having a practice of not providing special education, related services and supplementary aids and services that are based on peer-reviewed research in violation of MUSER §IX.3.A(1)(d)

**NO VIOLATION FOUND**

MUSER §IX.3.A(1)(d) states that the services to be provided to a special education student are to be “based on peer-reviewed research to the extent practicable.” District staff members



involved with the SPI program have engaged in such activities as: attending autism conferences in Boston; attending a three-day conference on social speech skills; taking graduate-level courses at USM; and observing at a highly regarded private institution for educating children with special needs. When designing the SPI program, the staff members also consulted ASHA guidelines. These various sources all supported the move away from the delivery of services in traditional, clinical settings towards delivering services in more natural environments.

The District provided to the parents of the students in those groups several journal articles that further support the general proposition that students are more successful at generalizing the skills they learn in therapy when delivered in more natural settings. The article “Analog Language Teaching Versus Natural Language Teaching: Generalization and Retention of Language Learning for Adults with Autism and Mental Retardation,” *Journal of Autism and Development Disorders*, Vol. 21, No. 4 (1991), defines “natural language teaching” as “instructional approaches that stress language teaching as an incidental part of interactions arising from training students in the appropriate use of materials in functional tasks and contexts.” The article cites to numerous other articles that support the advantages of natural language teaching, and concludes based on its own study that “because natural language teaching has many strengths, few drawbacks, and produces equal generalization and retention under disadvantageous conditions, it is strongly supported as preferable for people with autism and mental retardation.”

The Complainant notes correctly that this article is the only one of the four who’s research design featured delivery of services in a group context, and that it is 20 years old, but nothing was uncovered in this investigation to suggest either that the principles espoused in the other articles are inapplicable to a group context or that research has swung in some other direction. The fact is that the District employees took steps to inform themselves regarding current practices and recommendations in their fields, and used that information to inform their decision making. The law requires no more.

## **VII. Corrective Action Plan**

No later than 60 days after the start of the 2011-2012 school year, the District shall provide to the Department documentation setting forth, for each student whose IEP includes provision for OT services, the amount of service required to be provided over the first month of school, and the amount of OT services actually provided during that period. In the event that there is a material shortfall in the delivery of service to any of those students, the District shall further submit documentation of the scheduling of an IEP Team meeting to address the issue of whether compensatory OT services are necessary and appropriate for those students. If parents of a student whose OT services must be discussed in such an IEP Team meeting are dissatisfied with the outcome of said discussion, the District must inform the parents of their Due Process rights and the Written Notice must reflect that the District did so.